

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE STATE BOARD OF EDUCATION AND THE COMMISSIONER OF  
CHILDREN, FAMILIES AND LEARNING

In the Matter of the Proposed  
Revocation/Suspension of the  
Elementary School Principal's License of  
Thomas A. Sandhei

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge (ALJ) Phyllis A. Reha on April 24, 25, June 13, 14 and 15, 2000 at the Office of Administrative Hearings in Minneapolis, Minnesota. The parties filed post-hearing memoranda on August 15, 2000, and reply memoranda on September 5, 2000. The record closed on September 5, 2000.

Bernard E. Johnson, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, Minnesota, 55103-2106, appeared on behalf of the State Board of Education and Assistant Commissioner Tammy Pust of the Department of Children, Families and Learning<sup>1</sup>. J. Dennis O'Brien and Karen A. Janisch, Attorneys at Law, Rider, Bennett, Egan & Arundel, 333 South Seventh Street, Suite 2000, Minneapolis, Minnesota, 55402, appeared on behalf of Thomas A. Sandhei.

This Report is a recommendation, not a final decision. The Commissioner of the Department of Children, Families and Learning will make the final decision after a review of the record and may adopt, reject or modify the Findings of Fact, Conclusions and Recommendation contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and to present argument to the Commissioner. Parties should contact the licensing division of the Department of Children, Families, and Learning at 651/582-8691, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUES

1. Whether Thomas A. Sandhei violated Minnesota Statute § 626.556 by failing to report that a teacher slapped a seven year-old autistic student across the face.
2. Whether Thomas A. Sandhei instructed other school employees not to report that a teacher slapped a seven-year-old autistic student across the face.

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<sup>1</sup> On January 1, 2000, the school administrative licensure function of the State Board of Education transferred to the Commissioner of Children, Families and Learning. See, Minn. Laws 1999 Chapter 241, Article 10, Section 5, subd. 4(c) and Minn. R. 3512.2400.

3. Whether Thomas A. Sandhei's conduct constitutes immoral character or conduct in violation of Minnesota Statute § 122A.20, subd. 1(a)(1) justifying disciplinary action.
4. Whether Thomas A. Sandhei's conduct constitutes willful neglect of duty in violation of Minnesota Statute § 122A.20, subd. 1(a)(3) justifying disciplinary action.

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

Thomas A. Sandhei is a licensed elementary school principal and district superintendent. His licenses expire on June 30, 2001. (Krukow at 219, Ex. 6).

Mr. Sandhei has been a licensed educator since 1964. After working as an elementary school teacher, Mr. Sandhei became an elementary school principal in 1969. From 1969 until the present, Mr. Sandhei has served as an elementary school principal in school districts located in Minnesota and Colorado. (Sandhei at 550-52; Ex. D).

In 1993, Mr. Sandhei was recruited by Independent School District No. 281, the Robbinsdale Public Schools, to be Principal of Northport Elementary School in Brooklyn Center, Minnesota. (Sandhei at 552-53; Bauman at 580-81).

Mr. Sandhei was the principal of Northport Elementary School during the 1997-98 school year. During that year, Northport housed a special education program for students with moderate to severe mental impairments ("MSMI"). (Bauman at 580, Row at 694; Ex. D).

During the 1997-98 school year, Kathy Row was the licensed special education teacher in charge of Northport's MSMI classroom. There were approximately eight students in the MSMI classroom during the 1997-98 school year. Three educational assistants were assigned to assist Ms. Row in the MSMI classroom. In October and November of 1997, the three educational assistants assigned to the MSMI classroom under the direction of Ms. Row were: Karen Yochim, Melissa Elletson and Mollie Schierman. (Elletson at 236-237; Row at 694-95, 698).

Ms. Row and Ms. Schierman did not have a good working relationship. Almost from the start of Ms. Schierman's employment, there was tension between the two. This fact is reflected in the notes Ms. Schierman took documenting her workdays at Northport's MSMI classroom. Ms. Schierman began taking notes to "protect herself" because she was uncomfortable carrying out some of Ms. Row's instructions regarding the use of physical restraint. Ms. Row, for her part, felt that Ms. Schierman was not supportive and questioned her every directive. The tension between Ms. Row and Ms. Schierman contributed to the level of stress in the classroom. (Schierman at 329-331, 348-350, 380; Row at 695; Exs. 5, 5A).

On October 24, 1997, Kathy Row slapped a seven-year-old autistic student across the face with her open hand. Ms. Row had been attempting to lead the student by the hand out of the MSMI classroom to an inclusion class when the student swung out his arm and hit Ms. Row in her upper chest. In response to being hit by the student, Ms.

Row reflexively slapped the student across his right cheek. Immediately following the slap, Ms. Row pulled the child toward her and said aloud: "Oh my God. I can't believe I did that. You didn't see that." The slap caused the student's cheek to turn red. (Yochim at 55-56; Elletson at 237-238, 258; Schierman at 283-284; Row at 700).

Educational assistants Karen Yochim and Mollie Schierman witnessed the incident between Ms. Row and the student. Ms. Schierman had only a partial view of Ms. Row. Melissa Elletson was not looking directly at Ms. Row at the time of the incident and saw only motion from the corner of her eye. (Yochim at 55-56; Elletson at 255-258; Schierman at 283-284, 356).

When Ms. Row returned with the student to the MSML classroom, approximately 20 minutes later, the student's cheek was no longer red. (Elletson at 258; Row at 711-713).

On Monday, October 27, 1997, Melissa Elletson called Margaret Carlson, the school district's education assistant coordinator, to ask what the educational assistants should do regarding the events they observed and heard on October 24, 1997. Ms. Carlson instructed Melissa Elletson to report the incident to the school principal. (Elletson at 240).

Ms. Carlson did not direct the educational assistants to make a report of suspected child abuse to the local police or child welfare agency. (Elletson at 267).

On Monday, October 27, 1997, Mollie Schierman went to Mr. Sandhei's office to report the incident to him. Mr. Sandhei, however, was out of the state and not in his office that day. (Schierman at 287).

On Tuesday, October 28, 1997, Karen Yochim, Mollie Schierman and Melissa Elletson went to see Mr. Sandhei to report the incident. Mr. Sandhei was not available, so the three met with John Beach, an assistant to Mr. Sandhei. The three reported to Mr. Beach what had occurred between Ms. Row and the student. (Yochim at 60-61; Elletson at 242; Schierman at 288-89).

Mr. Beach told the three educational assistants that he would report the matter to Mr. Sandhei and would get back to them. Mr. Beach did report the incident to Mr. Sandhei on October 28, 1997. Later that day, Mr. Beach told the three educational assistants that he had informed Mr. Sandhei of the incident. (Yochim at 61, 64; Sandhei at 558-559).

Mr. Beach did not instruct the educational assistants to report the incident as suspected child abuse to the local police or child welfare agency. (Elletson at 269-270).

After being informed of the incident, Mr. Sandhei reported it to David Bauman, the School District's Senior Associate for Human Resources. Mr. Sandhei informed Mr. Bauman that he had learned that a teacher had slapped a student and he asked Mr. Bauman for direction on how to handle the situation. Mr. Bauman instructed Mr. Sandhei to talk to the persons involved. Mr. Bauman also offered to meet with Mr. Sandhei the next day. (Sandhei at 559; Bauman at 586).

On Wednesday morning, October 29, 1997, Mr. Sandhei met with Kathy Row before school started. Mr. Sandhei asked Ms. Row about the incident. Ms. Row admitted that she had slapped the child across the face. Ms. Row explained that the

child had struck her and that she had reflexively slapped him. Ms. Row was very upset and remorseful about the situation. (Sandhei at 560; Row at 702-703).

At approximately 10:00 a.m. on Wednesday, October 29, 1997, Mr. Sandhei met with Ms. Row and the three educational assistants, Karen Yochim, Melissa Elletson and Mollie Schierman, in the MSMI classroom. Mr. Sandhei initially scheduled this meeting for after school. But because Mollie Schierman had a scheduling conflict, Mr. Sandhei arranged to meet that morning in the classroom. Mr. Sandhei started the meeting by stating that there are little incidents and big incidents to report, and that he needed to determine whether this was a little or big incident. Mr. Sandhei then asked each of the educational assistants to describe what they had witnessed. The three educational assistants informed Mr. Sandhei that Kathy Row slapped the child across the face with her open hand after the child struck her. The educational assistants also told Mr. Sandhei that after slapping the child, Kathy Row stated: "Oh my God. I can't believe I did this. You didn't see that." The three educational assistants felt uncomfortable talking about the incident in front of Kathy Row. (Yochim at 65-66; Elletson at 242-245; Schierman at 290-293; Sandhei at 560-562).

Neither the educational assistants nor Ms. Row told Mr. Sandhei that the slap resulted in a red mark on the child's cheek. (Sandhei at 575, 635).

After discussing the incident, Mr. Sandhei told Kathy Row and the three educational assistants that he would investigate the matter further and that they were not to talk about it outside of the building. Because the incident involved a student and a teacher, Mr. Sandhei was concerned about gossip and wanted to ensure that the educational assistants complied with confidentiality and data practices requirements related to student and personnel information. None of the educational assistants asked Mr. Sandhei any questions or requested any clarification regarding his comments concerning confidentiality. (Yochim at 67; Elletson at 246-247; Sandhei at 569-71).

The subject of child abuse or child abuse reporting was never raised or mentioned by the educational assistants or Mr. Sandhei during the October 29, 1997 meeting. None of the educational assistants told Mr. Sandhei that they thought the incident was child abuse or that they thought the matter should be reported to the police or social services. And Mr. Sandhei never told or directed the educational assistants not to report the incident as child abuse or suspected child abuse. (Yochim at 142; Schierman at 394-95; Sandhei at 569).

Mr. Sandhei also asked each of the educational assistants whether they felt they could rebuild trust with Ms. Row and work together as a team. Karen Yochim and Melissa Elletson both said that they thought they could reestablish trust with Kathy Row. Mollie Schierman indicated that she was not certain whether she would be able to rebuild trust and continue working with Kathy Row. (Schierman at 293-94; Row at 704).

After the meeting with Ms. Row and the educational assistants, David Bauman suggested to Mr. Sandhei that Ms. Row receive a one-day suspension without pay. Mr. Sandhei agreed with this suggestion and informed Ms. Row of the disciplinary action on October 30, 1997. Mr. Sandhei also directed Ms. Row to call the student's mother and explain to her what happened. (Sandhei at 563-564; Bauman at 586-588).

On Thursday, October 30, 1997, Mr. Sandhei told Karen Yochim and Mollie Schierman that Kathy Row was going to be suspended for one day without pay and that she would also have to call the student's parent and explain the incident. Mr. Sandhei thanked both educational assistants for reporting the incident to him, and he reminded them that this matter was not to leave the building. (Yochim at 70; Schierman at 295).

Kathy Row was suspended on October 31, 1997 without pay.

On Friday, October 31, 1997, the student's mother came to Northport Elementary School to discuss the incident regarding Kathy Row and her child. Mr. Sandhei met with the parent and Karen Yochim. The parent was upset. During their discussion, Karen Yochim told Mr. Sandhei that Mollie Schierman was telling others about the incident outside of school. Mr. Sandhei said that he would put a stop to that. (Yochim at 71-72).

On November 5, 1997, Mr. Sandhei met with Mollie Schierman and Kathy Row. Mr. Sandhei wanted to follow-up on whether Ms. Schierman thought she would be able to rebuild trust and continue to work with Kathy Row. Ms. Schierman again stated that she was not sure. Mr. Sandhei was also concerned, based on Karen Yochim's statements, that Ms. Schierman may have breached the student's confidentiality by talking about the incident outside of the school building. Mr. Sandhei asked Ms. Schierman if she understood the parameters of confidentiality and the impact that a breach of confidentiality could have on her job. Ms. Schierman responded that she did. Mr. Sandhei did not tell Ms. Schierman that she could not make a mandatory child abuse report or file a report with the police, sheriff or welfare agency. The subject of child abuse or child abuse reporting was not raised or discussed during this meeting. At some point during their discussion, Ms. Schierman requested a job transfer. (Schierman at 295-297, 402-404, 421; Sandhei at 569-572; Ex. 5A).

Mr. Sandhei did not report the incident to the Brooklyn Center Police Department, the Hennepin County Sheriff or the Hennepin County Human Services Department pursuant to Minn. Stat. § 626.556. It never entered Mr. Sandhei's mind that the incident involving Kathy Row rose to the level of suspected child abuse mandating a report under Minn. Stat. § 626.556. (Sandhei at 569, 641).

Sometime in November 1997, Mollie Schierman did report the incident to the Department of Children, Families and Learning. Ms. Schierman believes that whenever a child is slapped, she has an obligation to report the incident as suspected child abuse. Ms. Schierman never communicated this belief to Mr. Sandhei. (Schierman at 299-302, 360; Ex. 7)

School Superintendent Ken Kostka and Licensed Principals Del Kramer, Dave Bauman and Mitchell Trockman opined that they would not have considered the slapping incident to be suspected physical abuse and that they would not have reported the incident as suspected child abuse. Moreover, these four school administrators do not consider that Mr. Sandhei's failure to report the incident constitutes immoral conduct, immoral character, gross inefficiency or a willful neglect of duties. (Kostka at 431-435; Bauman at 590-91; Kramer at 673-676; Ex. H at 9-16).

Mr. Sandhei's licenses are under the jurisdiction of the Department of Children, Families and Learning.

On December 30, 1999, Mr. Sandhei was served with a Notice of and Order for Hearing pursuant to Minnesota Statute Chapter 14, and Minnesota Rule 3512.2400, subp. 2. (Court Exs. 1, 2).

The Notice of and Order for Hearing alleged specifically that Mr. Sandhei instructed teaching assistants not to report the slapping incident outside the school district and that Mr. Sandhei did not file a mandatory report of physical abuse with the local welfare agency, police department or local sheriff. The Notice further alleged that this conduct constitutes immoral character or conduct, and/or willful neglect of duty or gross inefficiency in violation of Minnesota Statute § 122A.20, subd. 1(a)(1) and 1(a)(3). (Court Exs. 1, 2).

On January 19, 2000, Mr. Sandhei filed a timely answer to the allegations contained in the Notice of and Order for Hearing. (Court Ex. 3).

### CONCLUSIONS

The Administrative Law Judge and the Minnesota Department of Children, Families and Learning have jurisdiction in this matter pursuant to Minnesota Statutes §§ 14.50 122A.20, 122A.15, 122A.18, Minnesota Laws 1999 ch. 241, art. 10, § 5, subd. 4(c), and Minnesota Rule 3512.2400.

The State Board of Education and the Department complied with all relevant substantive and procedural requirements of law and rule.

Thomas Sandhei received proper and timely notice of the hearing in this matter.

The Department has the burden of proof to establish by a preponderance of the evidence that Thomas Sandhei's conduct constitutes immoral character or conduct, or a willful neglect of duty in violation of Minn. Stat. § 122A.20, subd. 1(a).

On October 24, 1997, the Maltreatment of Minors Act, Minn. Stat. § 626.556, subd. 3(a)(2) (1996), provided that:

A person who knows or has reason to believe that a child is being neglected or physically or sexually abused, as defined in subdivision 2, or has been neglected or physically or sexually abused within the preceding three years, shall immediately report the information to the local welfare agency, police department or the county sheriff if the person is: (1) a professional or professional delegate who is engaged in the practice of ... education ...

On October 24, 1997, "physical abuse" under Minnesota Statutes § 626.556, subd. 2(d) (1996), was defined as:

"Physical abuse" means any physical injury, mental injury, or threatened injury, inflicted by a person responsible for the child's care on a child other than by accidental means, or any physical or mental injury that cannot reasonably be explained by the child's history of injuries, or any aversive and deprivation procedures that have not been authorized under section 245.825.

Minn. Stat. § 626.556, subd. 2(d) (2000) lists specific examples of actions that, if done in “anger or without regard to the safety of the child” are considered physical abuse. These include the following specific examples:

- (1) throwing, kicking, burning, biting or cutting a child;
- (2) striking a child with a closed fist;
- (3) shaking a child under the age of three;
- (4) striking or other actions which result in any nonaccidental injury to a child under 18 months of age;
- (5) unreasonable interference with a child’s breathing;
- (6) threatening a child with a weapon, as defined in section 609.02, subdivision 6;
- (7) striking a child under age one on the face or head;
- (8) purposely giving a child poison, alcohol, or dangerous, harmful, controlled substances which were not prescribed for the child by a practitioner . . .
- (9) unreasonable physical confinement or restraint not permitted under section 609.379, including but not limited to tying, caging, or chaining.

The Minnesota supreme court has construed the phrase “reason to believe” in the Maltreatment of Minors Act as requiring a gross negligence standard.<sup>2</sup> In order to establish criminal liability under the child abuse reporting law, it must be demonstrated that the actor’s conduct involved a “gross deviation from the standard of care that a reasonable person would observe in the actor’s situation.”<sup>3</sup>

Pursuant to Minn. Stat. § 122A.20, subd. 1(a)(1), the Board of Teaching or the Commissioner may revoke or suspend a school administrative license for immoral character or conduct.

Pursuant to Minn. Stat. § 122A.20, subd. 1(a)(3), the Board of Teaching or the Commissioner may revoke or suspend a school administrative license for gross inefficiency or willful neglect of duty.

Pursuant to Minn. Rule 3512.2400, subp. 2, the Board of Education may act to suspend or revoke the license of a principal or superintendent after the following procedures have been followed:

- A. A written complaint that specifies the nature and character of the charges against the licensee is filed with the State Board of Education by a student, parent, community member, the school board employing the person, or by the commissioner.
- B. The commissioner, within ten calendar days after the filing of the complaint with the State Board of Education, serves a copy of the

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<sup>2</sup> State v. Jude, 554 N.W.2d 750, 753-54 (Minn. App. 1996).

<sup>3</sup> State v. Grover, 437 N.W.2d 60, 63 (Minn. 1989).

complaint upon the licensee by certified mail addressed to the licensee at the licensee's last known address.

- C. The licensee, within 20 calendar days after the service of the copy of charges, files with the State Board of Education an answer to the charges specified. The failure to answer within the 20-calendar-day period is a waiver of the right to a hearing.
- D. A hearing conducted according to the rules of the Office of Administrative Hearings, if not waived, must be held.

The Department has failed to establish by a preponderance of the evidence that Thomas Sandhei violated Minn. Stat. § 626.556 by not reporting the slapping incident as child abuse or suspected child abuse.

The Department has failed to establish by a preponderance of the evidence that Thomas Sandhei instructed other school employees not to report the incident as child abuse under Minn. Stat. § 626.556.

The Department has failed to establish by a preponderance of the evidence that Thomas Sandhei's conduct constitutes immoral character or conduct in violation of Minn. Stat. § 122A.20, subd. 1(a)(1) justifying disciplinary action.

The Department has failed to establish by a preponderance of the evidence that Thomas Sandhei's conduct constitutes willful neglect of duty or gross inefficiency pursuant to Minn. Stat. § 122A.20, subd. 1(a)(3) justifying disciplinary action.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

#### RECOMMENDATION

IT IS RECOMMENDED THAT the Commissioner of the Department of Children, Families and Learning take no disciplinary action against the licenses of Thomas Sandhei.

Dated this \_\_\_\_ day of October, 2000.

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PHYLLIS A. REHA  
Administrative Law Judge

Reported: Transcribed (5 volumes).

#### NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.



## MEMORANDUM

The Assistant Commissioner of the Department of Children, Families and Learning has brought disciplinary action against the licenses of Thomas Sandhei for his failure to report, under the Maltreatment of Minors Act<sup>4</sup>, that a teacher slapped a seven year-old student and for his alleged instruction to other school employees not to report the incident. The Assistant Commissioner maintains that the slapping incident amounted to “physical abuse” and that Mr. Sandhei’s failure to make a mandatory report constitutes willful neglect of duty and/or immoral character or conduct justifying disciplinary action. Mr. Sandhei argues that he was not required to report the slapping incident because it did not meet the definition of “physical abuse” under the Maltreatment of Minors Act. And Mr. Sandhei maintains that he never instructed anyone not to make a mandated report of child abuse.

Pursuant to Minn. Stat. § 122A.20, subd. 1(a)(1) and (3), the Commissioner of Children, Families and Learning has the authority to revoke or suspend a school principal’s license for immoral conduct and/or willful neglect of duty. In the instant matter, Assistant Commissioner Tammy Pust is recommending to the Commissioner that disciplinary action be taken against Thomas Sandhei’s licenses based on his failure to report the slapping incident as child abuse under the Maltreatment of Minors Act and for his alleged discouragement of others from reporting.

As an initial matter, Mr. Sandhei argues that the Department failed to initiate this proceeding based upon a written complaint, as required by Minn. Stat. § 122A.20, subd. 1(a). Consequently, Mr. Sandhei maintains that the Department lacks jurisdiction to bring this disciplinary action against his licenses. Minnesota Statute 122A.20, subd. 1(a), provides that:

The board of teaching or the commissioner, ... whichever has jurisdiction over a teacher’s licensure, may, on the written complaint of the school board employing a teacher, a teacher organization, or any other interested person, refuse to issue, refuse to renew, suspend or revoke a teacher’s license to teach for any of the following causes: (1) Immoral character or conduct; ... (3) Gross inefficiency or willful neglect of duty; ...”

Mr. Sandhei argues that, based on the statute’s express language, the Commissioner’s disciplinary authority is predicated upon the receipt of a written complaint from the school board, teacher organization, or other interested person. According to Mr. Sandhei, there is no evidence in the record of the Commissioner or the Department receiving and proceeding on a written complaint. Mr. Sandhei contends that absent a written complaint, the Commissioner lacked jurisdiction to go forward with this action.

The Department argues that the express language of the statute allows for complaints made by “any other interested person”, and the Assistant Commissioner and the Executive Director of the Board of Education qualify as other interested persons. And the Department asserts that, because the identity of a complainant is private data under Minn. Stat. § 13.41, subd. 2, the written complaint is never made part of the record. According to the Department, the only procedural due process issue in this

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<sup>4</sup> Minn. Stat. § 626.556 (1999).

matter is whether Mr. Sandhei was fully informed of the allegations made against him. The Department maintains that Mr. Sandhei has received sufficient notice throughout this proceeding. On September 16, 1998, Mr. Sandhei was first informed of the allegations against him in a letter sent by Assistant Attorney General Martha Casserly. And on December 30, 1999, Mr. Sandhei and his counsel were served with the Notice of and Order for Hearing in this matter which listed the specific allegations forming the basis for the proposed disciplinary action.

Because the term “written complaint” is not defined in Minn. Stat. § 122A.20, presumably any written document regarding the allegations against Mr. Sandhei would qualify. The record established that educational assistant Mollie Schierman reported the slapping incident and Mr. Sandhei’s alleged directive not to file a child abuse report to the Department of Children, Families and Learning’s Special Education Monitoring and Compliance division sometime in November of 1997. Ms. Schierman’s complaint was reduced to writing in a letter from the Department to the Superintendent of Robbinsdale School District #281. The letter, dated May 5, 1998, was organized into findings and conclusions and contained the allegations that the slapping incident was not reported to the police or other outside agency, and that Mr. Sandhei told the educational assistants to keep the matter within the school district.<sup>5</sup> The Administrative Law Judge finds this document summarizing Ms. Schierman’s complaint satisfies the requirement of Minn. Stat. § 122A.20, subd. 1(a) that any disciplinary action taken by the board or commissioner be based on a written complaint.

In addition, the notice of hearing provides the jurisdictional basis to proceed to a contested case hearing. The Notice of Hearing in this matter was sent by certified mail to Mr. Sandhei on December 19, 1999. The Notice specified the nature and character of the allegations against Mr. Sandhei and advised him that, pursuant to Minnesota Rule 3512.2400, subp. 2(C), he must file an answer to the charges within 20 calendar days. Mr. Sandhei filed a timely answer to the allegations contained in the Notice of Hearing on January 19, 2000. Mr. Sandhei is not challenging the sufficiency of the notice. The Administrative Law Judge finds that the Notice of Hearing adequately apprised Mr. Sandhei of the grounds on which this action is based and afforded him an opportunity to respond.

The Administrative Law Judge now turns to the merits of this matter, and specifically to the issue of whether the Commissioner has established grounds for disciplinary action against Mr. Sandhei’s licenses. The Notice of Hearing alleged the following grounds for license disciplinary action: (1) that Mr. Sandhei’s failure to report the October 24, 1997 slapping incident was “immoral conduct, immoral character and/or willful neglect of duty or gross inefficiency”; and (2) that Mr. Sandhei instructed the educational assistants not to report the slapping incident as child abuse and that this was immoral conduct, immoral character and/or willful neglect of duty or gross inefficiency.

The Commissioner alleges that Mr. Sandhei should have reported the slapping incident as suspected child abuse under the Maltreatment of Minors Act and that his failure to do so constitutes immoral conduct and/or a willful neglect of duty. The Act requires a report of abuse if the reporter knows or has reason to believe that physical

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<sup>5</sup> Ex. 7.

abuse, as defined by the statute, has occurred. On October 24, 1997, Minn. Stat. § 626.556, subd. 2(d) defined “physical abuse” as the infliction of any non-accidental physical injury on a child. In 1999, the Minnesota legislature added specific examples of conduct considered to be physical abuse to Minn. Stat. § 626.556, subd. 2(d). The examples include, but are not limited to, striking a child with a closed fist; striking a child under age one on the face or head; throwing, kicking, burning or cutting a child; and threatening a child with a weapon. In the instant matter, a seven year-old child was slapped with an open hand across the cheek. Although the statutory examples were not included in the definition of physical abuse when the incident at issue occurred, they do provide guidance as to the level of conduct intended to be covered by this statute. And, based on these examples, the single slap of a seven year-old falls below the level of maltreatment contemplated by the statute.

The Administrative Law Judge concludes that the evidence in this case does not support a finding that the single open-hand slap inflicted by Kathy Row caused “physical injury” to the seven year-old student amounting to reportable physical abuse. Although there was evidence that the slap caused the child’s cheek to turn red, there was no evidence that any red mark remained for any significant amount of time. Melissa Elletson testified that by the time Ms. Row returned with the student to the MSMI classroom (approximately 20 minutes after the incident), the red mark was gone. In addition, the record established that the slap was not intentional, but was rather a reflexive reaction on the part of Ms. Row in response to being struck by the child. The ALJ finds that, while the slapping of the child was completely inappropriate, it did not rise to the level of reportable physical abuse within the meaning of Minn. Stat. § 626.556.

Moreover, even if the slap did meet the definition of “physical injury” mandating a report to the local police or welfare agency under Minn. Stat. § 626.556, the Administrative Law Judge finds that Mr. Sandhei’s belief to the contrary was reasonable and did not constitute immoral conduct or a willful neglect of duty. In *State v. Grover*<sup>6</sup>, a principal was charged with violating the reporting statute for failing to report a teacher’s sexual abuse of a student. The court held that the statute’s “reason to believe” language requires a gross negligence standard.<sup>7</sup> That is, in order to establish a violation of the child abuse reporting law, it must be demonstrated that the actor’s conduct involved a “gross deviation from the standard of care that a reasonable person would observe in the actor’s situation.”<sup>8</sup> The Administrative Law Judge finds that the record in this matter does not support a finding that Mr. Sandhei’s conduct was grossly negligent or a gross deviation from a reasonable standard of care - especially given that Mr. Sandhei was never informed by anyone that the slap resulted in a (temporary) red mark on the child’s cheek. Rather, the record demonstrates that other school officials at Robbinsdale ISD #281 were aware of the incident and likewise did not make a child abuse report. And other licensed principals, based on the facts of the incident, would not have made a report of child abuse to the local police or welfare agency.

Although William Clelland, a municipal prosecutor and law school instructor, testified on behalf of the Department that a report should have been made, the

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<sup>6</sup> 437 N.W.2d 60 (Minn. 1989).

<sup>7</sup> *State v. Jude*, 554 N.W.2d 750, 753-54 (Minn. App. 1996).

<sup>8</sup> *State v. Grover*, 437 N.W.2d 60, 63 (Minn. 1989).

Administrative Law Judge gave his testimony little weight. Mr. Clelland was the prosecuting attorney in the criminal case against Mr. Sandhei and was unable to sufficiently separate himself from that role to give an uninterested expert opinion in this matter. As a result, the ALJ found Mr. Clelland's testimony to be unhelpful in determining whether the slapping incident mandated a report of child abuse. Accordingly, based on the record, the ALJ finds that the Department has not demonstrated by a preponderance of the evidence that Mr. Sandhei's failure to file a report of physical abuse constituted immoral conduct or a willful neglect of duty justifying disciplinary action.

The Administrative Law Judge also finds that the Department has failed to establish that Mr. Sandhei instructed the educational assistants not to make mandatory reports of child abuse. Rather, the record supports Mr. Sandhei's contention that he told the educational assistants not to talk about the incident outside of school out of his legitimate concern for maintaining the confidentiality of school and personnel data as required by the Minnesota Government Data Practices Act<sup>9</sup>. The evidence presented established that the educational assistants misinterpreted Mr. Sandhei's general comments regarding confidentiality to mean that he did not want them making mandated reports. The educational assistants never requested that Mr. Sandhei clarify his comments. In fact, when specifically asked by Mr. Sandhei if she understood the parameters of confidentiality, Ms. Schierman responded that she did. And all three educational assistants admitted that the topic of mandated reporting was never raised or discussed in front of Mr. Sandhei, and that Mr. Sandhei never told them not to report the incident to the local police or child welfare agency. Mr. Sandhei cannot be held responsible for the misinterpretations and assumptions made by the educational assistants. His comments to the three educational assistants that they not talk about the incident outside the school were, within the context of the Government Data Practices Act, completely appropriate and are not sufficient to support the Department's allegation that Mr. Sandhei instructed subordinates not to make mandated reports.

Moreover, the Administrative Law Judge is troubled by some of the assertions made in the Department's post-hearing briefs. In particular, the Department's claim that Mr. Sandhei "intimidated and browbeat three unsophisticated educational assistants into not reporting this incident" mischaracterizes the testimony presented in this matter.<sup>10</sup> Not only did the record establish that Mr. Sandhei never told the educational assistants not to make mandated reports, but both Ms. Yochim and Ms. Schierman did in fact contact the police and/or social service agencies to report the incident. And, contrary to the Department's repeated assertions that Mr. Sandhei told the educational assistants that he considered the slapping of the child to be a "little incident", both Ms. Yochim and Ms. Schierman testified that Mr. Sandhei stated that he would investigate the incident further to determine whether it was a big incident or a little incident.<sup>11</sup>

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<sup>9</sup> Minn. Stat. ch. 13.

<sup>10</sup> Assistant Commissioner's Post-Hearing Reply Memo at 5-6.

<sup>11</sup> In both her proposed findings of fact and in her post-hearing memoranda the Assistant Commissioner states that Mr. Sandhei told the educational assistants that he considered the slapping incident to be "a little incident". The Assistant Commissioner cites to Karen Yochim's testimony on page 66 of the transcript in support of this assertion. In fact, Ms. Yochim testified that Mr. Sandhei said: "there are little incidences and big incidences to report and ... he wanted to make it clear that ... this could have been a

Based on the findings above, the Administrative Law Judge concludes that the Department has failed to establish by a preponderance of the evidence, that Mr. Sandhei's conduct in this matter constitutes immoral character or conduct, and/or willful neglect of duty or gross inefficiency justifying disciplinary action. Accordingly, the ALJ recommends that the Commissioner take no disciplinary action against Mr. Sandhei's licenses.

P.A.R.

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little incidence, it could have been a big incidence but we should have followed chain of command ... ." (T. at 66; *See also*, T. at 293).